



FEB 06 1990

Reply To  
Attn. Of: SO-125

Mr. John Daniel Ballbach  
Attorney for Key Tronic Corporation  
1201 Third Avenue  
40th Floor  
Seattle, Washington 98101-3099

Re: Proposed Administrative Order On Consent And Interagency  
Agreement ("Agreement") In The Matter Of Colbert Landfill

Dear Mr. Ballbach:

Thank you for your comments on the above captioned matter. EPA has carefully reviewed your comments. It is our hope that this response will clarify the concerns raised in your letter dated January 19, 1990. Our response to your specific objections is as follows:

1. Paragraph III. 2.

On behalf of Key Tronics, you have objected to the Agreement's use of the term "lawful" and to the term "accepted". You express concern that the use of these terms could adversely affect ongoing legal proceedings and that the use of these terms may conflict with an oral decision by Judge Quackenbush in Key Tronic v. United States of America No C-87-20-JLQ (November 3, 1989).

In response to your concern, EPA and the United States Air Force have agreed to modify paragraph III.2. by inserting the underlined language as follows:

"It is the Air Force's position that during a portion of that time liquid wastes from Fairchild AFB, among others, were lawfully disposed at the Site after consultation with Spokane County using accepted practices of the period. It is also the Air Force's position that those liquid wastes included wastes, which subsequent to their lawful disposal at the site, were later classified as 'hazardous substances'. Those wastes entered into and migrated in underlying aquifers as described in the 'Remedial Investigation, Colbert Landfill' (1987)."

EPA recognizes that this is the position of the United States Air Force and does not take a position on this matter at this time.

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## 2. Paragraph V. 8.

On behalf of Key Tronics, you have also objected to the definition of "Covered Matters" in relation to its effect on the contribution protection provided by the Agreement.

The contribution protection provided by this Agreement is similar to the model language published in the Federal Register at 52 Federal Register 43393 (November 12, 1987). CERCLA Section 122(g), 42 U.S.C. Section 9622(g), grants EPA the authority to provide contribution protection in its de minimis settlements. Since this protection is an important component of EPA's de minimis settlement authority and since this was a vigorously negotiated matter, both EPA and the United States Air Force are unwilling to change this provision at this time.

Thank you for comments.

Sincerely,

*Randall F. Smith*  
for Charles E. Findley  
Director  
Hazardous Waste Division